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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,387	02/15/2002	Jay H. McCandless	HAR66 816 CONT	9309

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EXAMINER

WIMER, MICHAEL C

ART UNIT

PAPER NUMBER

2821

DATE MAILED: 03/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/075,387

Applicant(s)

MCCANDLESS ET AL.

Examiner

Michael C. Wimer

Art Unit

2821

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 February 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

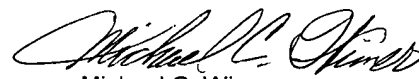
Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

  
Michael C. Wimer  
Primary Examiner  
Art Unit: 2821

Continuation of 5. does NOT place the application in condition for allowance because: the rejections set forth in the final Office action have not been overcome. For example, regarding the indefiniteness rejection, there is no definition of "the relative polarization difference between...". The added language "difference between" in the previous amendment was not originally disclosed and is not at all understood because no "angle" was implied between polarizations. The relationship of the "direction" and the "difference" was not set forth. It is unclear how a direction is determined from a difference between the recited, and respective structures. Regarding the arguments relative to the Nuding patent, they are all well taken, including the sketches and charts, with specific reference to Claim 40. The polarization rotating process is understood. However, the claims fall short of specifically reciting what applicants regard as their invention. Claim 40 recites a system for coupling two signals in two paths to allow a first polarization to propagate in the first path and the second polarization to propagate in the second path, along with a means for rotating the polarization of the signal in a plurality of increments from the first polarization to the second polarization. The coupling path in Nuding is the same. The "means" claimed is shown in Nuding and does provide an incremental rotation of the polarization (e.g., from zero to forty-five with relative positioning of waveguides 1 and 2, or zero to "minus" forty-five degrees with the waveguide 3 positioned relative to waveguide 1), as claimed. A plurality of increments exists between these two positions and the means, 5-8, etc., provide for such incremental rotation of the polarization. If there wasn't an incremental rotation, then the change in polarizations would not be effected. The polarization in Nuding undergoes a change. It is concluded that Claim 40 is not as specific as applicants imply and argue here. Polarization rotation is defined as increments of rotation. The means claimed allows the polarization to be rotated. The Nuding patent allows for such polarization rotation "in a plurality of increments". If at least two "increments" of rotation are to define distinct angles of rotation, say from zero to forty-five and then forty-five to ninety, then such a recitation should have been specifically recited in Claim 40, for example. Applicant's attention is directed to Pat. No. 2,975,383, to Seling and US Pat. No. 2,729,794 to Cohn (e.g., Figure 10), both cited as "References Cited" in Nuding et al, and showing two distinct rotations of the polarization vectors. The language of Claim 40 does not necessarily imply an "active" type of rotation in "increments" (or an implied "mechanical" rotation of a "means"), such as what results in these two cited references. The plurality of increments may merely be defined as angles or degrees between polarizations. That is why Nuding was used in the art rejection. The rotation from zero to forty-five degrees implies increments of rotation of the electric field. The two distinct rotations of the waveguides 2 or 3 in the Nuding patent, also provide a plurality of increments as claimed. The end result is the same, i.e., the polarization is rotated as desired.